FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

APPEAL FROM ORDER NO. 147 OF 1999.

Office Notes,Office Memoranda of Coram, appearnaces,Courts's orders or directions and Registrar's orders.	:	Court's or Judge's orders

Shri P.N. Joshi for the appellant.

CORAM: V.C.DAGA

DATED: 15-9-2004.

P.C.:

. This appeal is directed against the order dated 19.9.1998 passed in Misc.Application No. 99/1994 by the Civil Judge, SD, Nasik whereby application moved under O.9 R.9 of the C.P.C. came to be rejected.

2. The facts giving rise to the present appeal in nutshell are that one Prabhakar Dighe had filed a suit against the respondent for compensation of Rs. 85,000/- by way of damages caused to his property and loss of business, along with an amount of Rs. 30,600/- towards

interest. The said suit came to be dismissed for default on 7.4.1992 as learned Counsel appearing for the appellant could not attend the Court. Shri Prabhakar Dighe who was sick and is no more, was looking after the litigation. After his death, his legal heirs were not aware of the instant suit and pendency thereof. In these circumstances, after acquiring knowledge it appears that application was moved for restoration under O.9 R.9 of the C.P.C.

3. Prior to his death, for 5/6 months Prabhakar Dighe was not keeping well. During this period, suit appears to have been dismissed in default on 7.4.1992 . The legal heirs of the deceased Prabhakar Dighe after his death moved application under O.9 R.9 of C.P.C. and had shown sufficient cause for remaining absent. As such, the trial Court should have allowed the said application for restoration.

4. In this view of the matter, appeal is allowed. The impugned order is set aside and suit is restored to file. The trial Court is directed to dispose of the suit

as expeditiously as possible at any rate within a period of 6 months from the date of receipt of copy of this order.